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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

94-123

In re )  
 )  
FIRST MEDIA CORPORATION ) MMB File No. 900418A  
PETITION FOR DECLARATORY RULING )  
 )  
CHANNEL 41, INC. ) MMB File No. 870622A  
PETITION FOR REVIEW )  
 )  
HUBBARD BROADCASTING, INC. ) MMB File No. 920117A  
PETITION FOR RULE MAKING )  
  
TO: The Commission

**COMMENTS OF THE  
NETWORK AFFILIATED STATIONS ALLIANCE**

The Network Affiliated Stations Alliance ("NASA" or "Affiliates")<sup>1/</sup> supports the repeal of the off-network restriction of the prime time access rule ("PTAR") and the initiation of a rule making proceeding to do so.

The off-network restriction of PTAR prevents "commercial television stations owned by or affiliated with a national television network in the 50 largest television markets" from presenting network programming and "programming formerly on a national network (off-network programs)" for more than three of the four prime-time hours. 47 C.F.R. § 73.658(k) (1993). The purpose of PTAR was to promote "a healthy syndication industry composed of independent producers

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<sup>1/</sup> NASA is an informal coalition of the affiliate associations of the ABC, CBS and NBC Television Networks, representing more than 600 network affiliated stations.

capable of producing prime time quality programs"<sup>2/</sup> and to "free a portion of valuable prime time in which licensees of individual stations present programs in light of their own judgments . . . ."<sup>3/</sup>

In the quarter century since PTAR was adopted, however, the marketplace for the distribution of television programming has undergone a remarkable metamorphosis, opening new opportunities for independent producers and creating a healthy syndication market. With 30 or more channels available to the average home, no one can deny that today's television marketplace supplies producers of television programming with a diverse group of programming sources.<sup>4/</sup> There can be little question, then, but that these changes have substantially lessened the ability of the networks to "dominate" the program production industry.

PTAR was also designed, however, to protect the ability of stations to "present programs in light of their own judgments". As the Affiliates have noted elsewhere at length, the changes in the broader marketplace, though substantial,

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<sup>2/</sup> Network Television Broadcasting, Report and Order, 23 F.C.C.2d 382, 386 (1970).

<sup>3/</sup> Prime Time Access Rule, Second Report and Order, 50 FCC 2d 829, 835 (1975).

<sup>4/</sup> The Commission and the courts have recognized the opportunities available for independent producers in the context of largely eliminating the financial interest and syndication rules. See Evaluation of the Syndication and Financial Interest Rules, Second Report and Order, 8 F.C.C. Rcd. 3282 (1993); Schurz Communications v. Federal Communications Comm'n, 982 F.2d 1043 (7th Cir. 1992).

have not altered the relative balance of power between networks and affiliates: while the increase in distribution outlets, including stations, offers substantial new opportunities for program suppliers, the options of most affiliates remain largely unchanged.<sup>5/</sup> Accordingly, the Affiliates do not believe that the record warrants reexamining PTAR itself. The rule's prohibition on carriage of first-run network programming in access time continues to protect the ability of local stations to program to the needs and interests of their local communities and remains important to the Affiliates.

However, the rise of the Fox Network and its treatment as a "non-network" provide ample basis for revisiting and eliminating the off-network restriction of PTAR. No better evidence of this fact can be found than the support of many of the putative beneficiaries of the off-network provision, most notably the Walt Disney Company, for repeal.<sup>6/</sup>

As Disney has pointed out, the off-network provision, by restricting the syndication market for off-network programming, depresses the return on network

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<sup>5/</sup> See Comments and Reply Comments of NASA, MM Docket No. 221 (Nov. 21, 1991 and Dec. 19, 1991); Comments and Reply Comments of NASA, MM Docket No. 82-434 (March 23, 1992 and April 7, 1992).

<sup>6/</sup> See Comments of the Walt Disney Company, MM Docket No. 90-162 (Nov. 21, 1990).

programming itself and, thus, in the long run, reduces the quality of network programming. When the rule was initially adopted, the market for network programming was extremely strong and the syndication component of profitability relatively small. Today, however, the syndication component of network program revenues has become critical at the same time that the development of the Fox Network (and soon the Paramount and Warner Brothers Networks) has substantially reduced the number of prime time hours during which such programming can be exhibited.<sup>2/</sup> There is little doubt that the off-network provision significantly reduces the return on and quality of network programming.

Compounding this injury to the networks and their affiliates is the fact that neither Fox nor its affiliates are subject to the rule. For so long as Fox retains the fig leaf of not programming more than 15 hours of prime time, Fox Network can develop and/or bid for first-run network programs secure in the knowledge that those programs, unlike those of ABC, CBS and NBC, can be resold in syndication to all stations, network and independent alike. Fox O&O's and affiliates, which, in many of the largest markets are among the strongest and most profitable stations, are free to

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<sup>2/</sup> Fox now has 134 affiliates and has announced commitments that will bring its complement of affiliated stations to 150 full-time affiliates and 34 part-time affiliates. See Fox Nabs 12 Affiliates from Rivals, Washington Post, May 24, 1994, at A1. Fox currently provides 15 hours of prime-time programming per week to its affiliates.

compete against the other affiliates in the purchase of syndicated off-network programming secure in the knowledge that they, unlike the ABC, CBS and NBC affiliates, can carry that programming in prime time.

To perpetuate this regulatory imbalance would be nothing short of arbitrary and capricious. Given the strength of the non-network syndicated programming, there is simply no longer any need for the creation by regulation of a government-defined "market" for that programming. Given the ample supply of off-network product which would compete for access time, it also seems apparent that repeal of the off-network provision would enhance, not diminish, local station autonomy, thus furthering an important objective of PTAR.

The petitions captioned above have been pending for as long as seven years. Various calls for the repeal of the off-network restriction of PTAR have been made for almost 20 years.<sup>8/</sup> It would undoubtedly serve the public interest for a Commission proceeding to be commenced looking toward

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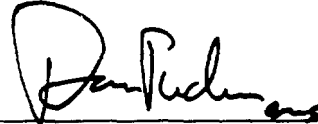
<sup>8/</sup> See Second Report, 50 F.C.C.2d at 835.

elimination of the off-network restriction of PTAR, and we  
urge the Commission to do so.

Respectfully submitted,

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STATIONS ALLIANCE

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